

This Opinion is Not a  
Precedent of the TTAB

Mailed: July 11, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Samjen of Tampa, Inc.*

Serial No. 90501155  
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Eric M. Pelton and Olivia M. Muller of Eric M. Pelton & Associates, PLLC,  
for Samjen of Tampa, Inc.

Andrew Janson, Trademark Examining Attorney, Law Office 105,  
Jennifer Williston, Managing Attorney.

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Before Taylor, English and Lebow,  
Administrative Trademark Judges.

Opinion by English, Administrative Trademark Judge:

Samjen of Tampa, Inc. (“Applicant”) seeks registration on the Principal Register  
of the standard-character mark BLACK BELT for the following services, as amended:

catering; hotels; restaurant; bar services; bed and breakfast inn services;  
catering services; cocktail lounge services; coffee shops; hotel  
accommodation services; hotel services; making reservations and  
bookings for restaurants and meals; night club reservation services,  
namely, arranging for cocktails and table service reservations at night  
clubs and night club events; providing general purpose facilities for  
meetings, conferences, and exhibitions; resort hotel services; resort  
lodging services; restaurant services featuring Creole, African, Italian,  
Jamaican, Mediterranean, Spanish, and American cuisine; restaurant  
and bar services; restaurant services; dog day care services; pet day care

services; providing banquet and social function facilities for special occasions in International Class 43.<sup>1</sup>

The Examining Attorney partially refused registration of Applicant's mark for a portion of the applied-for services, namely:

catering; hotels; restaurant; bar services; bed and breakfast inn services; catering services; cocktail lounge services; coffee shops; hotel accommodation services; hotel services; making reservations and bookings for restaurants and meals; resort hotel services; resort lodging services; restaurant services featuring Creole, African, Italian, Jamaican, Mediterranean, Spanish, and American cuisine; restaurant and bar services; restaurant services; providing banquet and social function facilities for special occasions (the "Refused Services")<sup>2</sup>

under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on a likelihood of confusion with the following marks registered to the same entity:

- KURO-OBI (standard characters) for "ramen restaurant services; providing foods and beverages services; restaurants; cafes; self-service restaurants; shops for serving food and drinks in the nature of a restaurant; bars; cocktail lounge services; coffee shop; providing foods and beverages services for banquet and

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<sup>1</sup> Application Serial No. 90501155 was filed on February 1, 2021 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), and is based on an allegation of an intent to use the mark in commerce.

Applicant applied to register the same mark for different services (application Serial Nos. 90501147 and 90501168), and the same Examining Attorney refused registration under Section 2(d) of the Trademark Act. Applicant appealed all three refusals. After Applicant filed its appeal briefs, the Examining Attorney filed a motion to consolidate the three appeals. 8 TTABVUE. On December 20, 2022, the Board granted the motion to consolidate. 9 TTABVUE. Notwithstanding the consolidation order, we issue separate opinions in the appeals because the cited marks and evidence in the appeals are different and there are some significant differences in the arguments at issue in each case.

<sup>2</sup> The following services in the application are not subject to the refusal:

night club reservation services, namely, arranging for cocktails and table service reservations at night clubs and night club events; providing general purpose facilities for meetings, conferences, and exhibitions; dog day care services; pet day care services.

party; takeaway restaurant; buffet restaurant; fast food restaurant; Japanese restaurant” in International Class 42;<sup>3</sup> and

- 黒帯 for “restaurant services, namely, ramen noodle restaurants” in International Class 43.<sup>4</sup>

When the refusal was made final, Applicant twice requested reconsideration and appealed. Both requests for reconsideration were denied and the appeal proceeded. The appeal is fully briefed. For the reasons explained, we affirm the partial refusal to register.

## I. Analysis

“The Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion [or] mistake, or to deceive.” *In re Charger Ventures LLC*, 64 F.4th 1375, 2023 USPQ2d 451, at \*2 (Fed. Cir. 2023) (cleaned up). Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on likelihood of confusion. *In re E. I. DuPont de Nemours & Co*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973)

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<sup>3</sup> Registration No. 5543145 registered on August 21, 2018. The registration includes the following translation statement: “The English translation of ‘KURO-OBI’ in the mark is BLACK BELT.” The registration also includes goods in International Class 30, but this class does not form the basis for the Section 2(d) refusal.

<sup>4</sup> Registration No. 4498366 registered on March 18, 2014; Section 8 declaration accepted; Section 15 declaration acknowledged. The registration includes the following description of the mark: “The mark consists of two Japanese characters.” Color is not claimed as a feature of the mark. The registration also includes the following transliteration statement: “The non-Latin characters in the mark translate to ‘KURO-OBI’ and this means ‘Black Belt’ in English.”

“*DuPont*”) cited in *B&B Hardware, Inc. v. Hargis Ind., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015); *see also Charger Ventures*, 2023 USPQ2d 451, at \*4.

We consider each *DuPont* factor for which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019); *M2 Software, Inc. v. M2 Commc’ns., Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1242 (TTAB 2015) (“While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant.”). Varying weight, however, may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination”). Moreover, “each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the relatedness of the goods and services. *See In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”); *see also In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The

likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.’”) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)). We address these two factors and other relevant *DuPont* factors below.

#### **A. Similarity or Dissimilarity of the Services**

We begin with the second and third *DuPont* factors, which respectively consider “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration,” and “the similarity or dissimilarity of established, likely-to-continue trade channels.” *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051-52 (Fed. Cir. 2018) (quoting *DuPont*, 177 USPQ at 567); *Sabhmani v. Mirage Brands, LLC*, 2021 USPQ2d 1241, at \*19 (TTAB 2021).

We must base our comparisons under the second and third *DuPont* factors on the identifications of services in Applicant’s application and the cited registrations. *Charger Ventures*, 2023 USPQ2d 451, at \*6 (“The relevant inquiry in an ex parte proceeding focuses on the goods and services described in the application and registration.”) (emphasis omitted); *Stone Lion Capital Partners, L.P. v. Lion Capital LLC*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014); *In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

With respect to the second *DuPont* factor, it is sufficient for a finding of likelihood of confusion if relatedness is established for any service encompassed in the recitation

of services in a particular class in an application. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *Double Coin Holdings Ltd. v. Tru Dev.*, 2019 USPQ2d 377409, at \*6 (TTAB 2019); *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015).

Although both the involved application and cited registration for the KURO-OBI mark identify restaurant services featuring specific cuisine, both also more broadly identify identical services, namely, “restaurant services,” “bar services”/“bars” “cocktail lounge services,” and “coffee shop[s].” In addition, Applicant’s “restaurant services” encompass the “ramen restaurant services” identified in the cited registration for the mark 黒帯. *Monster Energy Co. v. Lo*, 2023 USPQ2d 87, at \*15-16 (TTAB 2023) (“If an application or registration describes goods or services broadly, and there is no limitation as to their nature, it is presumed that the ‘registration encompasses all goods or services of the type described.’”) (quoting *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 107 USPQ2d 1167, 1173 (Fed. Cir. 2013)); *In re Hughes Furniture Indus., Inc.*, 114 USPQ2d 1134, 1137 (TTAB 2015) (“Applicant’s broadly worded identification of ‘furniture’ necessarily encompasses Registrant’s narrowly identified ‘residential and commercial furniture.’”).

Because Applicant’s Refused Services and Registrant’s services are legally identical, in part, and there are no limitations on trade channels or consumers, we must presume that there is some overlap in the trade channels and relevant purchasers. *Hunter Indus., Inc. v. Toro Co.*, 110 USPQ2d 1651, 1661 (TTAB 2014);

*Am. Lebanese Syrian Associated Charities, Inc. v. Child Health Research Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011); *see also In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1906 (Fed. Cir. 2012); *In re RiseSmart, Inc.*, 104 USPQ2d 1931, 1935 (TTAB 2012).

We find that the second and third *DuPont* factors weigh heavily in favor of finding a likelihood of confusion. Applicant does not assert any arguments to the contrary.

**B. Similarities and Differences Between the Marks in Appearance, Sound, Connotation and Commercial Impression**

Under the first *DuPont* factor, we consider the “similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.” *DuPont*, 177 USPQ at 567; *see also Stone Lion*, 110 USPQ2d at 1160. “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (affirmed on appeal)).

The issue is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the services offered under the respective marks is likely to result. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012). The focus is on the recollection of the average patron of restaurant services, i.e., an ordinary consumer, who normally retains a general rather than specific impression of trademarks. *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 169 USPQ

39, 40 (CCPA 1971); *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). We do not predicate our analysis on a dissection of the involved marks; we consider the marks in their entireties. *Stone Lion*, 110 USPQ2d at 1160; *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”).

In comparing the marks, we keep in mind that where, as here, the services are legally identical in part, “the degree of similarity necessary to support a conclusion of likely confusion declines.” *Viterra*, 101 USPQ2d at 1912 (quoting *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992)); *Aquamar*, 115 USPQ2d at 1126 (“The legal identity of Applicant’s and Registrant’s goods and their overlapping channels of trade and classes of purchasers not only weigh heavily in favor of a finding of likelihood of confusion, but also reduce the degree of similarity between the marks necessary to find a likelihood of confusion.”).

Applicant’s mark and the cited marks are distinct in appearance and sound. The Examining Attorney, however, argues that when the doctrine of foreign equivalents is applied, confusion is likely because the marks have the same meaning and commercial impression.<sup>5</sup>

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<sup>5</sup> Examining Attorney’s Brief, 10 TTABVUE 7-8.

Under the doctrine of foreign equivalents, foreign words from common, modern languages are translated into English to determine similarity of connotation to ascertain confusing similarity with English word marks. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005). “The doctrine of foreign equivalents is not an absolute rule and should be viewed merely as a guideline,” applying “only when it is likely that the ordinary American purchaser would ‘stop and translate [the word] into its English equivalent.’” *Id.* The ordinary American purchaser includes purchasers “knowledgeable in the foreign language,” here, Japanese. *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1647-48 (TTAB 2008); *In re Thomas*, 79 USPQ2d 1021, 1024 (TTAB 2006).

Applicant does not dispute that Japanese is a common modern language and the record supports that this is the case.<sup>6</sup> *In re Tokutake Indus. Co.*, 87 USPQ2d 1697, 1699 (TTAB 2008) (“In this case, the foreign language is Japanese, which the evidence shows is a modern language spoken by more than 100 million people worldwide and by hundreds of thousands of people in the United States.”); *cf. La Peregrina*, 86 USPQ2d at 1648 (“We presume that a word in one of the common, modern languages of the world will be spoken or understood by an appreciable number of U.S. consumers

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<sup>6</sup> February 22, 2022 Final Office Action, TSDR at 17-18 (U.S. Census Table 2009-2013, comprising “a sample of the total population” identifying nearly 450,000 people over age 5 in the United States as speaking Japanese at home); *see also id.* at 56 (worlddata.info: “A total of about 125.8 million people worldwide speak Japanese as their mother tongue.”); *id.* 57-58 (May 10, 2011 article on [asiamattersforamerica.org](http://asiamattersforamerica.org), titled “Japanese Language Classes at US Colleges are More Popular than Chinese and Korean Combined”: “In 2009, 73,434 American college students were enrolled in Japanese language classes .... [G]reater exposure to Japan’s popular culture has sparked a greater interest in Japan among this generation of American students.”); *id.* at 59 (the Modern Language Association of America reporting that Japanese is the fifth most commonly taught language in the United States).

for the goods at issue.”). Nor does Applicant dispute the evidence of record demonstrating that BLACK BELT is a direct translation of the Japanese word KURO-OBI (or the phonetic equivalents KUROOBI and KURO OBI) and the characters 黒帯, of which the transliteration is KURO-OBI.<sup>7</sup>

Rather, Applicant argues that “the doctrine of foreign equivalents does not apply” because “it is unlikely that a consumer would translate the mark due to the marketplace circumstances or the commercial setting in which the mark is used[.]”<sup>8</sup>

To this end, Applicant points out that the cited registration for the mark 黒帯 identifies restaurant services featuring ramen noodles, which is a Japanese dish.<sup>9</sup> Applicant also introduced evidence that both cited marks “are used in connection with Ramen restaurants” and “Registrant’s services are provided from [a] store front featuring Japanese décor, in Japanese-style bowls, and the menu features the Japanese names of products. ... Registrant uses the Japanese language in almost every aspect of its business and offers exclusively Japanese food—reinforcing the

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<sup>7</sup> The evidence consists of translations from japandict.com, reverse.net, jisho.org and jlearn.net/dictionary (February 22, 2022 Final Office Action, TSDR 36, 50; October 12, 2022 Denial of Second Request for Reconsideration, TSDR 10, 21); the translation and transliteration statements in the cited registrations (*see supra* n.2 and n.3); Registrant’s menu identifying “Black Belt” as the English translation of KURO-OBI and 黒帯 (*see infra* p. 12); and eight English-language websites discussing martial arts, a Japanese movie about martial arts, a Japanese restaurant, and Japanese tattoos designs (October 12, 2022 Denial of Second Request for Reconsideration, TSDR 12-20, 22-55).

<sup>8</sup> Appeal Brief, 6 TTABVUE 13-14 (internal quotation marks omitted).

<sup>9</sup> August 22, 2022 Second Request for Reconsideration, TSDR 17-22 (December 21, 2021 article titled “What is Ramen?” on the website thespruceeats.com).

commercial impression that Registrant is a Japanese restaurant that has a Japanese name that is not meant to be translated.”<sup>10</sup>

Applicant analogizes the facts of this appeal to those in *In re Tia Maria, Inc.*, 188 USPQ 524 (TTAB 1975). In that case, the Board reversed the refusal to register the mark TIA MARIA for restaurant services based on a likelihood of confusion with the mark AUNT MARYS registered to one entity for canned fruit and another entity for canned vegetables and canned fruit. In assessing whether the relevant consumers would perceive the marks as equivalents, the Board took into consideration the context in which consumers would encounter the respective marks:

[T]here are foreign expressions that even those familiar with the language will not translate, accepting the term as it is, and situations arise in the marketplace which make it unfeasible or even unlikely that purchasers will translate the brand names or labels appearing on canned foods and other like products. ... That is, insofar as this reasoning applies to the instant case, it is unlikely to expect that a person encountering “AUNT MARYS” canned fruits and vegetables in a supermarket or other establishment where goods of this type are customarily sold would translate “AUNT MARYS” into “TIA MARIA”, and then go one step further and associate these food products with applicant’s restaurant. Likewise, going the other route, it is difficult to perceive that a person who had purchased “AUNT MARYS” canned fruits and vegetables on the shelves of a supermarket would, upon dining at the “TIA MARIA” restaurant in Mexican decor and surrounded by a menu of Mexican delicacies, translate “TIA MARIA” into “AUNT MARY” and then mistakenly assume that the “TIA MARIA” restaurant and “AUNT MARYS” canned fruits and vegetables originate from or are sponsored by the same entity.<sup>11</sup>

*Id.* at 526.

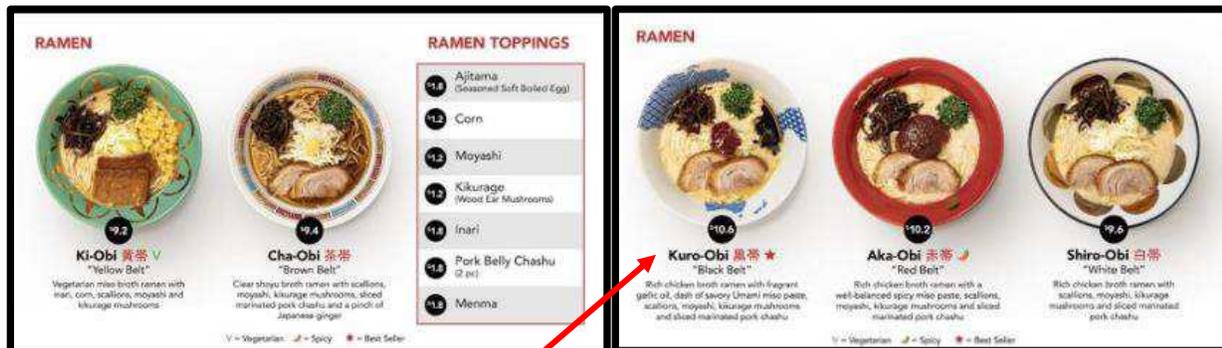
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<sup>10</sup> Appeal Brief, 6 TTABVUE 14-15.

<sup>11</sup> The Board also observed that “the fact that the cited registrations issued over each other serves to diminish their effectiveness as bars to the registration sought by applicant.” *Tia Maria*, 188 USPQ at 526. Here, both cited marks are owned by the same registrant.

In contrast to *Tia Maria* where the goods and services were different and encountered in different trade channels, here Applicant's and Registrant's services are identical, in part, and we must presume that they will be encountered by some of the same purchasers in the same trade channels such that consumers are likely to view the in-part legally identical services as emanating from a common source, marketed under marks that are foreign language equivalents.

The screenshots of Registrant's menu and storefront that Applicant introduced into the record, shown below, support that consumers encountering Registrant's marks are likely to translate them to the English word "Black Belt" because it is translated for them:<sup>12</sup>



<sup>12</sup> Appeal Brief, 6 TTABVue 15 (red arrows added by the Board) (citing August 22, 2022 Second Request for Reconsideration, TSDR 11, 24).



As shown in the images above, Registrant has named many of its dishes after the various colors of martial arts belts<sup>13</sup> and in its menu displays the Japanese characters and words for the belts above their English equivalents, including the word KURO-OBI and the equivalent Japanese characters 黒帯. Registrant's storefront also depicts a black belt next to the mark KURO-OBI, and the store counter bears the words BLACK BELT underneath the design of a belt in black font or etching. The translations on Registrant's menu and storefront increase the likelihood that

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<sup>13</sup> August 22, 2022 Second Request for Reconsideration, TSDR 49, (October 13, 2020 online article titled "The 8 Most Famous Japanese Martial Arts Today" noting that "a common way to rank in several martial arts" is the "use of belts of different colors, starting with white for basic and black for advanced"); *see also id.* at 42-43 ("Initially, [in judo] there were only two belts [for ranking]: white (for kyu ranks) and black for (dan ranks), but now more colors have been added."; "Karate borrowed judo's kyo and dan system to rank its practitioners. The belt system is incorporated into the ranking system, starting with white at the lowest level and progressing on to black, the most advanced.").

consumers familiar with the Japanese language will translate KURO-OBI and the Japanese characters 黒帯 to the English word “BLACK BELT.” *Aquamar*, 115 USPQ2d at 1127 (“When consumers view Applicant’s MARAZUL packaging they will see several Spanish words displayed next to their English equivalents, increasing the likelihood that they will translate MARAZUL.”); *see also In re Highlights for Children, Inc.*, 118 USPQ2d 1268, 1271 (TTAB 2016) (“[W]hen foreign words appear next to the English language equivalents, an ordinary purchaser will still recognize the terms as equivalents because of the provided translation.”). Even consumers not familiar with Japanese are likely to understand the translation because it is provided to them.

In view of the foregoing, we find it likely that ordinary American consumers knowledgeable in the Japanese language are likely to stop and translate the cited marks upon encountering them.

Applicant argues that even if the doctrine of foreign equivalents applies, the marks “have distinct meanings that create separate commercial impressions.”<sup>14</sup> Specifically, Applicant argues that the cited marks “reference the martial arts ‘BLACK BELT, i.e. the indicator of expertise given to those who have reached a specific level of competency in Karate or Jiu-jitsu (both Japanese martial arts)’ whereas ‘Applicant is using BLACK BELT to refer to the geographic region of the United States (similarly [sic] to the ‘Bible Belt,’ ‘Rust Belt,’ or ‘Corn Belt’)’ that ‘is the name used for the area extending across Alabama and Mississippi, notable for its fertile black clayey soil and

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<sup>14</sup> Appeal Brief, 6 TTABVUE 13.

formerly notable for the production of cotton. ... Applicant's mark is meant to evoke a connection to the hardworking culture and prosperity that has always been present in the BLACK BELT."<sup>15</sup> Applicant, however, has not pointed to any part of its identification of services that would prompt consumers to attribute this meaning to its mark. Nor has Applicant introduced any evidence to support its argument about how consumers will perceive its mark. Attorney argument is no substitute for evidence. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018).

As discussed above, the identifications of services in Applicant's application and Registrant's KURO-OBI registration broadly encompass "restaurant services," without any limitation as to the featured cuisine.<sup>16</sup> Accordingly, we must presume that Applicant could offer restaurant services featuring Japanese cuisine, as the record shows Registrant does in connection with both cited marks. In such circumstances, consumers would be likely to perceive Applicant's mark and Registrant's marks as a reference to "one who holds the rating of expert in various arts of self-defense (such as judo and karate)"; or "also: the rating itself."<sup>17</sup> Even if Applicant's mark and

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<sup>15</sup> Appeal Brief, 6 TTABVUE 16-17.

<sup>16</sup> As discussed on page 6 *supra*, while the involved application and cited KURO-OBI mark both specify restaurant services featuring different cuisines, they also more generally identify "restaurant services" without restriction. *See In re C.H. Hanson Co.*, 116 USPQ2d 1351, 1355 (TTAB 2015) ("Registrant's identification is presumed to encompass all goods of the type described[.]"); *see also Sabhnani v. Mirage Brands*, 2021 USPQ2d 1241, at \*20 (identifications "are construed to include all goods [or services] of the type identified"). So Applicant is incorrect in its assertion that "it has narrowed its services to specifically exclude [Japanese] cuisine." Appeal Brief, 6 TTABVUE 17.

<sup>17</sup> We take judicial notice that "karate" is "a Japanese art of self-defense[.]" <https://www.merriam-webster.com/dictionary/karate> (last visited July 7, 2023). "The Board may take judicial notice of dictionary definitions, including online dictionaries which exist in

Registrant's KURO-OBI mark were used in connection with non-Japanese restaurants,<sup>18</sup> it is likely that both marks would carry this connotation because it suggests "expert" or high quality restaurant services and food.<sup>19</sup> Accordingly, on the record before us, we find that Applicant's and Registrant's marks have the same meaning and create the same commercial impression.

To the extent Applicant argues that the differences between the marks in appearance and sound are sufficient to distinguish the marks, we disagree. Because BLACK BELT is a direct and unambiguous translation of the cited marks and the services are identical, in part, we find that the equivalency in meaning outweighs those differences. *Aquamar*, 115 USPQ2d at 1127-28 (finding identity in meaning outweighed difference between the marks in appearance and sound; "In the context of these identical goods, which come from the sea, there is nothing to separate the meaning of the terms MARAZUL and BLUE SEA, nor is there a different nuance or meaning for either term in their respective languages; they are exact equivalents."); *La Peregrina*, 86 USPQ2d at 1648-50 (similarity in meaning outweighed differences in appearance and pronunciation where the goods were identical and applicant's mark was an exact translation of cited mark).

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printed format or have fixed regular editions." *In re Nextgen Mgmt., LLC*, 2023 USPQ2d 14, at \*9 n.5 (TTAB 2023); see also, e.g., *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

<sup>18</sup> Unlike the cited mark 黒帯, registered for ramen noodle restaurants, the registration for the mark KURO-OBI more broadly encompasses "restaurant services" generally.

<sup>19</sup> Indeed, Applicant recognizes that "[c]onsumers viewing Applicant's mark will understand" it "to reference the high quality they can expect from Applicant's restaurant, catering, hotel and general facility services." Appeal Brief, 6 TTABVUE 17.

In view of the foregoing, we find that the first *DuPont* factor weighs in favor of finding a likelihood of confusion. *In re Sarkli, Ltd.*, 721 F.2d 353, 220 USPQ 111, 113 (Fed. Cir. 1983) (“[T]he PTO may reject an application ex parte solely because of similarity in meaning of the mark sought to be registered with a previously registered mark.”); *Thomas*, 79 USPQ2d at 1025 (MARCHE NOIR for jewelry likely to be confused with BLACK MARKET MINERALS for retail jewelry store services, despite marks being “decidedly different in sound and appearance,” in large part because “marche noir” means “black market” in French); *In re Perez*, 21 USPQ2d 1075, 1077 (TTAB 1991) (EL GALLO for fresh vegetables likely to be confused with ROOSTER for fresh fruit, because “[w]hile the marks are concededly distinguishable in their appearance and sound, it is our view that the equivalency in meaning or connotation is sufficient, in this case, to find likelihood of confusion”).

## II. Conclusion

Applicant’s Refused Services and Registrant’s services are legally identical, in part, and the trade channels and consumers overlap. The identity of the marks in meaning and commercial impression also outweigh the dissimilarities between the marks in look and sound. Because all the relevant *DuPont* factors weigh in favor of finding a likelihood of confusion, we find that Applicant’s mark BLACK BELT for the Refused Services is likely to cause confusion with the cited marks.

**Decision:** The partial refusal to register Applicant’s mark for the following Refused Services under Section 2(d) of the Trademark Act is affirmed:

catering; hotels; restaurant; bar services; bed and breakfast inn services; catering services; cocktail lounge services; coffee shops; hotel accommodation services; hotel services; making reservations and bookings for restaurants and meals; resort hotel services; resort lodging services; restaurant services featuring Creole, African, Italian, Jamaican, Mediterranean, Spanish, and American cuisine; restaurant and bar services; restaurant services; providing banquet and social function facilities for special occasions.

The application will proceed with respect to the following services:

night club reservation services, namely, arranging for cocktails and table service reservations at night clubs and night club events; providing general purpose facilities for meetings, conferences, and exhibitions; dog day care services; pet day care services.